

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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CIVIL ACTION NO.

03-CV-12513 NG

MASS. DISTRICT COURT
DISTRICT OF MASS.

EMC CORPORATION,

Plaintiff

MAGISTRATE JUDGE

Cohen
COMPLAINT

VS.

MARSHALL L. EDWARDS,

Defendant

AMOUNT \$ 150 52526
SUMMONS ISSUED YES
LOCAL RULE 4.1
WAIVER FORM
MCF ISSUED
BY DPTY. CLK. 10 AM
12/15/03

The Plaintiff, EMC Corporation, by its attorneys COHN & DUSSI, LLC, as and for its
Complaint herein alleges as follows:

THE PARTIES

1. The Plaintiff, EMC Corporation (hereinafter the "Plaintiff"), is a corporation duly organized by law having a place of business in Hopkinton, Massachusetts.
2. The Defendant, Marshall L. Edwards (hereinafter the "Defendant") is an individual having a usual place of residence at 401 Edgedale Drive, High Point, North Carolina 27262.

JURISDICTION

3. This Court has jurisdiction over this claim under 28 U.S.C. Section 1332, based upon Diversity Jurisdiction.

COUNT I
(Breach of 1999 North American Compensation Plan Agreement)

4. The Plaintiff reavers, realleges and incorporates herein by reference the allegations contained in Paragraphs 1 through 3 above with the same full force and effect as if expressly set forth herein.
5. On or about January 11, 1999, the Defendant executed and delivered to the Plaintiff a Goal Acknowledgment Form whereby he “acknowledge[d] receipt and acceptance of the . . . terms of the 1999 Commission Plan.” A true and accurate copy of the 1999 North American Compensation Plan and Goal Acknowledgment Form is attached hereto as Exhibit “A” and by this reference specifically incorporated herein.
6. Pursuant to the terms and conditions of the 1999 North American Compensation Plan, the Defendant agreed to pay to the Plaintiff all amounts due in connection with an overpayment of commissions by the Plaintiff to the Defendant, together with interest, costs and attorneys’ fees.
7. On or about November 8, 2001, the Defendant signed a Severance Agreement wherein the Defendant terminated his employment with the Plaintiff. A true and accurate copy of the Severance Agreement is attached hereto as Exhibit “B” and by this reference specifically incorporated herein.
8. The Plaintiff has sent numerous letters to the Defendant requesting payment pursuant to, among other documents, the 1999 North America Compensation Plan and the 1999 Goal Acknowledgment Form.
9. On June 11, 2003, the Plaintiff made a formal, written demand for payment upon the

Defendant for amounts due pursuant to the Agreements for the overpayment of commissions. A copy of the Plaintiff's Demand is attached hereto as Exhibit "C".

10. The Defendant has breached its Agreements with the Plaintiff by failing to repay the Plaintiff for the amount of the overpaid commissions and owes the Plaintiff the sum of Two Hundred Fifty One Thousand and 00/100 (\$251,000.00) Dollars.
11. Based upon the breach, the Defendant owes the Plaintiff the total sum of Two Hundred Fifty One Thousand and 00/100 (\$251,000.00) Dollars together with interest from the date of demand, plus costs and attorneys' fees.

COUNT III
(Unjust Enrichment)

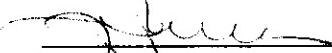
12. The Plaintiff reavers, realleges and incorporates herein by reference the allegations contained in paragraphs 1 through 11 above.
13. The Plaintiff overpaid the Defendant for certain commissions provided to the Defendant, and, despite repeated requests, the Defendant has failed to return the amount of the overpaid commissions to the Plaintiff.
14. As a result of the foregoing, the Defendant has been unjustly enriched in the sum of Two Hundred Fifty One Thousand and 00/100 (\$251,000.00) Dollars, which sum the Plaintiff is entitled to recover.
15. As a result of this unjust enrichment, the Defendant owes the Plaintiff the sum of Two Hundred Fifty One Thousand and 00/100 (\$251,000.00) Dollars.

WHEREFORE, the Plaintiff, EMC Corporation, prays that Judgment enter as follows:

1. Enter judgment against the Defendant, Marshall L. Edwards, and in favor of the Plaintiff, in the sum of Two Hundred Fifty One Thousand and 00/100 (\$251,000.00) Dollars together with interest from the date of demand;
2. Award the Plaintiff, EMC Corporation, its costs and disbursements for prosecuting this action, including reasonable attorneys' fees, in connection with the Defendant; and
3. Granting the Plaintiff, EMC Corporation, such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,
EMC Corporation,
By its attorneys,
Cohn & Dussi, LLC,

Date: 10/14/03


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